

SENATE CHAMBER,  
AUSTIN, TEXAS, Saturday, April 29, 1871. }

Senate met pursuant to adjournment; President Campbell presiding.

Roll called; no quorum present.

Absent—Senators Broughton, Cole, Dohoney, Gaines, Hertzberg, Mills, Saylor and Tendick.

Absent--excused—Senators Evans and Flanagan.

The Sergeant-at-Arms was dispatched for the absentees.

Senators Broughton, Cole, Dohoney, Hertzberg, Mills, Saylor and Tendick appeared and answered to their names.

Quorum present.

Prayer by the Chaplain.

President Campbell presented a communication from Senator Gaines asking to be excused for the day on account of sickness in his family.

There being no objection, Senator Gaines was excused.

Special message from the Governor by his private secretary as follows:

GOVERNOR'S OFFICE,  
AUSTIN, April 28th, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: I return to your house, where it originated, an act entitled "An act to incorporate the Texas Savings Bank."

I am informed, on reliable authority, that Levy Parsons, August Belmont and George Dennison, (who are citizens of New York,) the names of whom figure as corporators herein, have not authorized the use of their names in this act. The unauthorized use of these names by the parties (whoever they may be) who have secured the passage of the act, may indicate some improper purpose, and I therefore recommend a reconsideration of the act.

Very respectfully,

EDMUND J. DAVIS,

Governor.

Message read.

Senator Pridgen moved that the message be referred to a select committee of three. Carried.

The Chair appointed as such committee Senators Pridgen, Bell and Dohoney.

Senator Dohoney presented the following report of Committee of Free Conference on House bill No 14.

COMMITTEE ROOM,  
AUSTIN, April 28, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR: Your Committee of Free Conference, appointed to confer with a like committee on the part of the House, to consider Senate amendments to House bill No. 14, after due deliberation, beg leave to report back and recommend that the Senate refuse to recede from its amendments.

R. B. TENDICK,  
Chairman.

Report read.

On motion of Senator Bell, the rules were suspended and report adopted.

### REPORTS OF STANDING COMMITTEES.

Reports of Committee on Judiciary :

COMMITTEE ROOM,  
AUSTIN, April 28, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR: Your Committee on Judiciary to whom was referred House bill No. 138, entitled "An act for the relief of J. L. L. McCall, late district attorney of the thirty-third judicial district, after careful consideration, instruct me to report the same back and recommend its passage.

Respectfully,

A. J. FOUNTAIN,  
Chairman.

Report read and laid over under the rules.

COMMITTEE ROOM,  
AUSTIN, April 28, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR: Your Committee on Judiciary, to whom was referred House bill No. 200, entitled "An act further regulating proceedings in the several courts of the State of Texas, after careful consideration, instruct me to report the same back and recommend the passage of the accompanying bill as a substitute therefor.

Respectfully,

A. J. FOUNTAIN,  
Chairman.

Senate substitute for House bill No. 200, to be entitled "An act further regulating proceedings in the several courts of the State of Texas." Report and substitute read first time.

COMMITTEE ROOM,  
AUSTIN, April 28, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR : Your Committee on Judiciary, to whom was referred House bill No. 117, entitled, "An act to incorporate the Marion County Bayou Navigation Company," after careful consideration, instruct me to report the bill back without recommendation, and ask to be discharged from further consideration of the same.

Respectfully,

A. J. FOUNTAIN,  
Chairman.

Reports read and laid over under the rules.

Special message from the Governor by his private secretary, as follows:

GOVERNOR'S OFFICE,  
AUSTIN, April 28, 1871.

Hon. DON CAMPBELL.

President of the Senate of Texas :

SIR : I return to the Senate, where it originated, the act entitled "An act authorizing and requiring the sheriffs of the several counties in this State to pay certain claims."

This act requires the sheriffs to receive, in payment of dues to the State, certain certificates which are not required to be audited by the Comptroller. It is objectionable in that respect, and it is further objectionable in making a discrimination between officers of the State by an attempt to secure payment of the services of certain of them to the exclusion of others, whose services are equally meritorious.

Means should be supplied in the regular way to supply any temporary deficiency in the current revenue and thus secure the pay of all State officers. I trust the Legislature may agree with me as to the advisability of a reconsideration of this act.

Very respectfully,

EDMUND J. DAVIS,  
Governor.

Message read.

Senator Pickett moved that the Senate proceed to consider the message. Carried.

[Senator Ruby in the chair.]

The question being "Will the Senate, upon reconsideration, agree

to pass the bill, Senate bill No. 341, 'An act authorizing and requiring the sheriffs of the several counties in this State to pay certain claims?' "

Senator Baker moved a call of the Senate. Call sustained.

Absent—President Campbell.

Absent—excused—Senators Evans, Flanagan and Gaines.

On motion of Senator Bowers, the Sergeant-at-Arms was dispatched for President Campbell with instructions to bring him before the bar of the Senate there to offer excuse for his absence.

President Campbell appeared before the bar of the Senate and offered reasons for his absence.

On motion of Senator Fountain, the reasons were accepted and President Campbell excused.

On motion of Senator Bell, the call was suspended.

[President Campbell resumed the chair.]

The question recurring upon the passage of Senate bill No. 341, the bill, upon reconsideration, was passed by the following vote :

Yeas—Baker, Bell, Cole, Dohoney, Douglass, Ford, Hall, Hertzberg, Hillebrand, Latimer, Parsons, Pettit, Pickett, Pridgen, Pyle, Rawson, Shannon—17.

Nays—Bowers, Broughton, Fountain, Mills, Ruby, Saylor, Tendick—7.

Reports of Committee on Judiciary :

COMMITTEE ROOM,  
AUSTIN, April 28, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR: A majority of your Committee on Judiciary, to whom was referred Senate bill No. 346, entitled "An act amendatory of an act creating the office of weigher of cotton for certain ports in the State," passed September 1, 1856, after careful consideration, instruct me to report the same back and recommend its passage.

Respectfully,

A. J. FOUNTAIN,  
Chairman.

COMMITTEE ROOM,  
AUSTIN, April 28, 1871.

Hon. DON CAMPBELL,

President of the Senate :

SIR: Your Committee on Judiciary, to whom was referred House joint resolution No. 22, "Authorizing the Governor to dispose of the Houston Tap and Brazoria Railroad," after careful considera-

tion, instruct me to report the same back and recommend its passage with accompanying amendments.

Respectfully,

A. J. FOUNTAIN,  
Chairman.

Amendments to House joint resolution No. 22, by Senate Judiciary Committee: Amend section one, line seven, by inserting after the word "public" the words "or private;" amend by adding to the bill the following: "Section 2. That this act take effect and be in force from and after its passage."

COMMITTEE ROOM,  
AUSTIN, April 28, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: A majority of your Committee on Judiciary, to whom was referred Senate bill No. 327, entitled "An act to change the mode of compensation to the members of the Legislature of the State of Texas," after careful consideration, instruct me to report the same back and recommend its passage.

Respectfully,

A. J. FOUNTAIN,  
Chairman.

COMMITTEE ROOM,  
AUSTIN, April 28, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Judiciary, to whom was referred Senate bill No. 307, entitled "An act to repeal section 29 of 'an act to organize the courts of justices of the peace and county courts, and to define their jurisdiction and duties, approved August 13, 1870,'" after careful consideration, instruct me to report the same back and recommend its passage.

Respectfully,

A. J. FOUNTAIN,  
Chairman.

COMMITTEE ROOM,  
AUSTIN, April 28, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Judiciary, to whom was referred petition of J. M. Wadsworth, after careful consideration, instruct me to

report the same back and recommend the passage of the accompanying act.

Respectfully,

A. J. FOUNTAIN,  
Chairman.

Senate bill No. 392, "An act for the relief of J. Wadsworth."  
Read first time.

COMMITTEE ROOM,  
AUSTIN, April 28, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Judiciary, to whom was referred Senate bill No. 82, entitled "An act for the relief of Mrs. America P. McCall," after careful consideration, instruct me to report the same back and recommend that, inasmuch as an auditorial board has been created for the examination of claims against the State, and as this is a claim which should properly come before said board, no action be taken on said bill. Your committee, therefore, ask to be discharged from further consideration thereof.

A. J. FOUNTAIN,  
Chairman.

COMMITTEE ROOM,  
AUSTIN, April 28, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Judiciary, to whom was referred Senate bill No. 332, entitled "An act regulating appeals in criminal cases, and allowing fees to the Clerk of the Supreme Court," after careful consideration, instruct me to report the same back and recommend its passage with accompanying amendments.

Respectfully,

A. J. FOUNTAIN,  
Chairman.

Amendments to Senate bill No. 332, by Judiciary Committee: Section two, line five, amend by striking out the words "as soon as practicable, and inserting the word "immediately;" section two, lines sixteen and seventeen, by striking out the words "he shall briefly state such opinion in writing," and inserting the words "he shall allow said appeal, and endorse upon the transcript his allowance thereof;" section two, line seventeen, by striking out the word "direct" and inserting the words "it shall then be the duty of;" section two, line nineteen, by striking out the word "two;" section two, lines twenty-four and twenty-five, strike out the words "he

shall endorse his opinion on the transcript," and insert the words "he shall disallow the appeal, and endorse his disallowance on the transcript;" section two, line twenty-five, by striking out the words "and direct," and inserting the words "whereupon it shall be the duty of."

Section three, lines two and three, by striking out the words "motion for" and inserting the words "notice of;" section three, line three, by striking out the word "made" and inserting the word "given."

Amend by striking out section six entirely, and changing the number of next section.

Reports read and laid over under the rules.

COMMITTEE ROOM.

AUSTIN, April 28, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Judiciary, to whom was referred Senate bill No. 354, entitled "An act to legalize certain acts of the County Court of Brazos county," after careful consideration, instruct me to report the same back and recommend its passage.

Respectfully,

A. J. FOUNTAIN,

Chairman.

Report read.

On motion of Senator Saylor, the rules were suspended to consider the report and bill.

Bill read second time, ordered engrossed and passed to a third reading.

On motion of Senator Saylor, the rules were further suspended and Senate bill No. 354 read third time and passed.

Report of Committee of Engrossed Bills:

COMMITTEE ROOM,

AUSTIN, April 29, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on Engrossed Bills, having examined and compared Senate bills No. 205, "An act to incorporate the Paris Gas Company;" No. 238, "An act to amend an act entitled 'an act fixing the terms of the Supreme Court of the State of Texas, and authorizing and requiring the court to establish rules, approved August 13, A. D. 1870;'" No. 337, "An act to incorporate the Hearne and Little Brazos Bridge Company;" No. 357, "An act to incorporate the Austin Social Club;" No. 370, "An act to amend an act to incorporate the Western Narrow Gauge Railway Com-

pany,' passed 'August 4, 1870;'" No. 383, "An act authorizing the Commissioner of the General Land Office to employ additional assistant draftsmen, and providing for the payment thereof;" No. 384, "An act authorizing the Commissioner of the General Land Office to appoint three additional draftsmen for his department, and fixing the salaries and making an appropriation therefor;" No. 390, "An act to exempt from taxation certain property therein specified," and substitute for Senate bill No. 149, "An act to incorporate the Sabine and Neches Bridge Company," find the same to be correctly engrossed."

G. T. RUBY,  
E. L. DOHONEY,  
P. W. HALL.

Report read and received.

By leave, Senator Mills presented a "memorial of John R. Williams, Jr., on behalf of the Western Union Telegraph Company." Read and referred to the Committee on State Affairs.

President Campbell submitted the following message from the Governor, delivered to him yesterday at 2:20 P. M., after the adjournment of the Senate, by the Governor's private secretary:

GOVERNOR'S OFFICE,  
AUSTIN, April 28, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: I return to your House, where it originated, the Senate bill entitled "An act to prescribe the manner in which cases shall be tried in the Supreme Court of the State of Texas, when one or more of the judges may be disqualified by having presided at the trial of such case in the district or lower court, or from any other cause."

This bill is clearly unconstitutional in that it puts a disqualification upon the supreme judges which has no foundation in the Constitution. I refer to that part of it which assumes a disqualification in cases where one of the judges has presided as a district or inferior judge on a trial of the same cases in the court below. This is no disqualification under the Constitution, and the Legislature cannot make it such by any enactment. If any case should occur before the Supreme Court where one of the judges had presided below, he must, under the Constitution, go on and try the case, and no special judge substituted for him by the Governor would have jurisdiction, notwithstanding this bill were allowed to become a law.



The only result would be the confusion and uncertainty of proceedings in our highest judicial tribunal.

Very respectfully,

EDMUND J. DAVIS,

Governor.

Senator Bowers moved that the Senate refuse to receive the message, and that the motion to reject be referred to the Committee on Judiciary, together with the message and bill.

Senator Fountain moved that the message, bill and all matter pertaining thereto be referred to the Judiciary Committee with instructions to investigate and report upon the facts in the case. Carried.

Senator Ruby rose to a question of privilege, and moved that the report of the Committee of Conference on Senate bill No. 29, "An act to incorporate the Texas Cotton Spinning and Manufacturing Company," be adopted.

Yeas and nays called for and the Senate refused to adopt the report by the following vote:

Yeas—Mr. President, Dohoney, Hall, Parsons, Pettit, Pickett, Pridgen, Ruby, Saylor, Shannon, Tendick—11.

Nays—Baker, Bell, Bowers, Broughton, Douglass, Ford, Fountain, Hertzberg, Hillebrand, Latimer, Mills, Pyle, Rawson—13.

Report of Committee on Internal Improvements:

COMMITTEE ROOM,  
AUSTIN, April 28, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your committee, to whom was referred House bill No. 505, entitled, "An act to encourage the speedy construction of a railway through the State of Texas to the Pacific Ocean," have had the same under consideration and instruct me to report upon the same favorably and recommend that it do pass.

W. H. PARSONS,  
Chairman.

Report read and laid over under the rules.

By leave, Senator Parsons introduced a resolution (Senate joint resolution No. 36) instructing and requesting our Congressional delegation to urge upon Congress the reimbursement to cotton raisers of the cotton tax, imposed upon the products of the soil by act of Congress in 1864, 1866 and 1867. Read first time.

On motion of Senator Pickett, the rules were suspended to consider the resolution. Read second time, ordered engrossed and passed to a third reading.

On motion of Senator Parsons, the rules were further suspended and Senate joint resolution No. 36 read third time and passed.

On motion of Senator Tendick, the rules were suspended to take from file Senate bill No. 329, "An act to incorporate the Texas and Europe Steamship Company. Read second time.

Senator Douglass offered the following amendment, which was adopted: "Amend section one, line three, insert after the name Ben-net G. Burley the name Lewis T. Merrow."

The following amendments, reported by the Committee on Immigration, were adopted: Amend by striking out section five; amend section six by striking out the figure "6" and inserting the figure "5;" amend last line of section one, after the word "Galveston" add "or any other port or city."

Bill ordered engrossed and passed to a third reading.

On motion of Senator Parsons, the rules were further suspended and Senate bill No. 329 read third time and passed.

By leave, Senator Ford submitted the following report of Committee on State Affairs.

COMMITTEE ROOM,  
AUSTIN, April 28, 1871.

Hon. DON CAMPBELL,

President of the Senate:

SIR: Your Committee on State Affairs, to whom was referred House bill No. 589, "An act supplementary to an act entitled an 'an act to incorporate the Casino Society of Yorktown,'" have carefully considered the same and instruct me to report the same back and recommend its passage with the following amendments, to wit: Amend section one, lines four and five, strike out the following words: "sell any spirituous or malt liquors without license," and insert the following "pursue any occupation that is now or may hereafter be required to pay a license tax, except lectures, artistic exhibitions and dramatic performances given in the Casino House in Yorktown.

S. W. FORD,  
Chairman.

Report read.

On motion of Senator Ford, the rules were suspended to consider the report and bill. Bill read second time.

On motion of Senator Ford, the amendments reported by the Committee on State Affairs were adopted and the bill passed to a third reading.

On motion of Senator Ford, the rules were further suspended and House bill No. 589 read third time and passed.

On motion of Senator Saylor, the rules were suspended to take

from file House bill No. 501, "An act to incorporate the Germania Club of the City of Galveston." Read second time and passed to a third reading.

On motion of Senator Saylor, the rules were further suspended and House bill No. 501 read third time and passed.

Senator Dohoney rose to a question of privilege, and moved that a Committee of Conference be appointed to confer with a like committee on the part of the House on House amendments to Senate bill No. 9, "An act authorizing the county courts to sell the school lands situated in their respective counties." Carried.

The President appointed on such committee Senators Dohoney, Hertzberg and Baker.

On motion of Senator Douglass, the rules were suspended to take from file Senate bill No. 150, "An act to authorize certain persons therein named to operate a ferry on Sabine river in Upshur County."

On motion of Senator Douglass, the following House amendments to Senate bill No. 150 were concurred in: Amend section two by adding the following: "*Provided*, that nothing shall in any manner prejudice the rights of other parties who have, or may hereafter, set up an adverse title to the land embraced within the limits of said ferry."

On motion of Senator Douglass, the Senate refused to concur in the following amendment: Amend in third line, section three: strike out word "one," and insert in lieu thereof the words "one half."

On motion of Senator Bowers, the Senate at 12 M. adjourned to 10 A. M. Monday.

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